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C O N F I D E N T I A L SECTION 01 OF 02 BRUSSELS 003543

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SUBJECT: WAR CRIMES DEPUTY ASKS EU FOR HELP ON GUANTANAMO
AND KHMER ROUGE TRIBUNAL

Classified By: Acting Deputy Political Counselor Vincent Carver for reasons 1.4 (b) and (d).

¶1. (C) Summary: Milbert Shin, Deputy for War Crimes Issues, met with EU officials Dec. 12-13 to request EU assistance in facilitating U.S. agreements with European states to accept transferees from Guantanamo. While obtaining no commitments, he did receive assurances from officials in the Council Secretariat that they would raise the request with High

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Representative Solana's Representative for Human Rights. In separate meetings, he discussed funding plans and concerns about corruption in the Khmer Rouge Tribunal (KRT) with the European Commission. End summary.

¶2. (C) S/WCI Deputy Shin told officials at the Council Secretariat that the U.S. is asking countries with strong

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human rights records, including many EU member states, to accept approximately 23 Guantanamo detainees who are scheduled for transfer but cannot be sent back to their home countries for fear of persecution. The only European country to so far accept former detainees from Guantanamo is Albania, which took eight people, Shin said. He noted that the U.S. is not seeking to make the transfers an EU issue, but is instead requesting that High Representative Solana use his good offices to facilitate discussion among the U.S. and EU member states that have expressed a willingness to consider accepting transferees. Claudia Gintersdorfer, administrator in the Council Secretariat's Human Rights Unit, asked why the U.S. doesn't accept the Guantanamo transferees itself. Shin replied that the combination of domestic political opposition and legal hurdles (including immigration restrictions on those giving material support to terrorists) make that option untenable. In response to Gintersdorfer's query about security mitigation measures the U.S. would offer, Shin said the U.S. does not ask countries to hold detainees on its behalf, but rather asks that they undertake measures to mitigate the risk an individual may pose, ranging from investigation and prosecution to travel restrictions and surveillance measures. Christiane Hohn, of the Council Secretariat's Transatlantic Relations Unit, said the EU would

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like to see Guantanamo closed, but it is up to each member state to decide about accepting former detainees. Morten Knudsen, who follows UN and International Criminal Court issues at the Council Secretariat, described the potential acceptance of transferees from Guantanamo as "legally complicated and politically controversial." Gintersdorfer, Hohn, and Knudsen agreed to present Shin's request to Riina Kionka, Solana's Representative for Human Rights. Shin also met with EU Counterterrorism Coordinator Gilles de Kerchove,

the content of which will be reported septel.

13. (SBU) In a separate meeting, Shin spoke with European Commission Cambodia officers Thomas Gnocchi and Daniele Dal Molin about EU funding for the Khmer Rouge tribunal, the UNDP audit report, and the proposal for a UN Special Advisor to the Secretary General for the court. Gnocchi fully agreed with Shin's assessment that allegations of corruption must be addressed and mechanisms should be put in place to mitigate the potential for similar problems in the future. He cited EU efforts to address concerns about corruption and mismanagement, explaining that after initial problems securing full access to the UNDP audit report, the Commission sent a six-point letter to UNDP outlining its concerns. Following from the points in the letter, the EU is contributing to the Terms of Reference for a further review designed to measure the implementation of the audit recommendations. The review will be carried out by UNDP in January 2008. Gnocchi explained that the review will be crucial in determining whether the EU will continue its funding of the tribunal. He added that the Commission will also take note of member state and U.S. actions on funding as it determines its own course of action. While the final decision on funding rests with the Human Rights Unit of the Commission, Gnocchi cautioned that other departments will participate in the discussion and he could not rule out a decision by the independent anti fraud office or European Court of Auditors to launch further investigations in response to the allegations against the tribunal, which could impact additional funding. In response to Shin's question about timing of a decision, Gnocchi said that, under the best case scenario, a decision would be made at the end of the review, but the money would not actually be available until late 2008. He promised to make details of the review terms of reference available to the U.S.

14. (SBU) S/WCI Deputy Shin explained the need to create a UN Special Advisor position in order to create more coherence within the court and among the UN bodies involved in supporting the court. The Special Advisor would further

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efforts to implement the UNDP audit report recommendations. Gnocchi appeared to favor the idea in principle. He noted however that there was, to his knowledge, no EU consensus on the issue, so it would be necessary to first canvass involved member states before an official common view could be articulated. He agreed to further investigate member state positions and inform U.S. officials of EU thinking.

15. (SBU) Shin also met with two officials from the EuropeAid Cooperation Office, Erich Wilhelm Muller, Director of the Asia Directorate, and Andre Philippe Chalmin, administrator, who were careful to point out that their role in the KRT is purely to administer the contractual aspects of Commission decisions and not to delve into political and policy realms. Muller said, however, that the Commission has been concerned about UNDP's oversight of the KRT, noting that it has a management obligation to ensure that corruption is addressed.

He described his role as making sure that political sensitivities are not overriding sound financial management decisions. In terms of future KRT funding from the Commission, Muller said it can quickly increase its original funding by up to 20 percent through a relatively simple process, but anything beyond that would involve a broader decision process and, therefore, would take a minimum of three months. Financing decisions of more than 1 million euros generally need to be approved by member state committees and the European Parliament, he said.

16. (U) This report has been cleared by S/WCI Deputy Shin.
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